

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY BUCHAREST IMMEDIATE

C O N F I D E N T I A L STATE 158438

E.O. 11652: GDS

TAGS: CPRS, EFIN, RO

SUBJECT: DECREE 223 PROPERTY CASES:DIPLOMATIC NOTE TO GOR

- -

REF: STATE 150131, BUCHAREST 4119

1. DEPUTY ASSISTANT SECRETARY LUERS CALLED IN THE
ROMANIAN DCM ON JUNE 21 TO DELIVER A DIPLOMATIC NOTE ON
DECREE 223 PROPERTY CASES (TEXT OF NOTE TRANSMITTED BELOW)
AND TO URGE PROMPT GOR RESOLUTION OF PENDING CASES. LUERS
NOTED THAT THE PROPERTY CLAIMS ISSUE IS RECEIVING
INCREASED ATTENTION BOTH WITHIN THE EXECUTIVE BRANCH AND
ON THE HILL, AND POINTED TO THE JULY 12 SENATE HEARINGS ON
ROMANIAN MFN AS A POSSIBLE VENUE FOR FURTHER AIRING OF
THIS ISSUE. LUERS EXPLAINED THAT ALTHOUGH THE QUESTION
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OF CLAIMS SETTLEMENTS IS DIRECTLY RELATED TO GSP AND NOT
TO MFN, ROMANIAN INACTION ON THIS MATTER ALSO CLOUDS THE
WFN PICTURE. HE URGED THAT AS A START THE GOR FIND SOME
WAY OF RESOLVING THE 3 CASES WHICH AMBASSADOR AGGREY -
PRESENTED TO DEPUTY PRIME MINISTER PATAN IN MARCH. IN
RESPONSE, IONITA LIMITED HIMSELF TO POINTING OUT THAT
ROMANIA HAS A PROBLEM IN SETTLING CASES FOR AMERICANS IN A

WAY WHICH DISCRIMINATES AGAINST OTHER CITIZENS SUBJECT TO DECREE 223, WHICH APPLIES TO ALL CONFISCATION CASES. HE ASSURED LUERS, HOWEVER, THAT BUCHAREST IS FULLY AWARE OF U.S. CONCERNS AND THAT HE WOULD IMMEDIATELY REPORT TO

HIS GOVERNMENT ON OUR CURRENT DEMARCHE.

2. IN DELIVERING COPY OF NOTE TO APPROPRIATE GOR OFFICIAL, EMBASSY SHOULD POINT OUT THAT U.S. HAS ACCEPTED REPEATED ROMANIAN ASSURANCES OF COOPERATION OVER PAST 3 YEARS BUT HAS NOT SEEN ANY CLAIMS SETTLED AT LEVEL WHICH CONFIRMS GOR WILLINGNESS TO PROVIDE "ADEQUATE" COMPENSATION IN THOSE CASES WHERE THE PROPERTY VALUE IS CLEARLY ABOVE DECREE 223 LIMITS, AS REQUIRED BY SECTION 502 OF U.S. TRADE ACT. EMBASSY SHOULD ALSO NOTE

THAT THE SUBJECT OF DECREE 223 CLAIMS WAS RAISED DURING JUNE 15 HOUSE HEARINGS AND THAT WE EXPECT SECTION 502 LINK TO PROPERTY CLAIMS TO COME UP DURING SENATE MFN HEARINGS TO BE HELD ON JULY 12. CONCRETE ACTION ON PENDING CASES WHICH PROVES GOR WILLINGNESS TO GO BEYOND DECREE 223 LIMITS WOULD BE VERY USEFUL TO DEMONSTRATE TO SENATE THAT GOR ASSURANCES WILL BE TRANSLATED INTO REALITY.

3. BEGIN TEXT. THE DEPARTMENT OF STATE HAS THE HONOR TO
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DRAW TO THE ATTENTION OF THE EMBASSY OF THE SOCIALIST REPUBLIC OF ROMANIA THE CONCERN OF THE GOVERNMENT OF THE UNITED STATES OVER THE EFFECT OF ROMANIAN DECREE 223/1974 ON THE PAYMENT OF PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION FOR THE EXPROPRIATION OF PROPERTY OF UNITED STATES NATIONALS UNDER INTERNATIONAL LAW AND SECTION 502 (B) (4) OF TITLE V OF THE TRADE ACT OF 1974.

4. AS THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA IS WELL AWARE, THIS MATTER HAS BEEN THE SUBJECT OF NUMEROUS DISCUSSIONS BETWEEN REPRESENTATIVES OF BOTH GOVERNMENTS SINCE 1973.

5. IN THEIR JOINT STATEMENT ON ECONOMIC, INDUSTRIAL AND TECHNOLOGICAL COOPERATION OF DECEMBER 5, 1973, THE UNITED STATES OF AMERICA AND THE SOCIALIST REPUBLIC OF ROMANIA AGREED THAT "...EXCEPT FOR A PUBLIC PURPOSE, ASSETS BELONGING TO NATIONALS, COMPANIES AND ECONOMIC ORGANIZATIONS OF ONE OF THE TWO COUNTRIES WILL NOT BE EXPROPRIATED BY THE OTHER COUNTRY, NOR WILL THEY BE EXPROPRIATED WITHOUT THE PAYMENT OF PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION". THIS COMMITMENT WAS

REITERATED, VERBATIM, IN THE LONG-TERM AGREEMENT ON ECONOMIC, INDUSTRIAL AND TECHNICAL COOPERATION SIGNED NOVEMBER 21, 1976.

6. IN ITS AIDE-MEMOIRE OF AUGUST 26, 1975, CONCERNING DECREE 223/1974, THE AMERICAN EMBASSY IN BUCHAREST EXPLAINED, INTER ALIA, THE REQUIREMENT IN SECTION 502 OF THE TRADE ACT OF 1974 RELATING TO EXPROPRIATION OR SEIZURE OF PROPERTY OWNED BY AMERICAN CITIZENS AND THE CONDITIONS FOR ACCORDING DEVELOPING COUNTRIES THE BENEFITS OF THE UNITED STATES SYSTEM OF GENERALIZED PREFERENCES (GSP). IT FURTHER EXPRESSED CONCERN OVER THE FACT THAT THE ABSOLUTE LIMITS ON THE AMOUNTS OF COMPENSATION FOR REAL PROPERTY IN URBAN AND RURAL AREAS
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EXPROPRIATED PURSUANT TO DECREE 223/1974 DO NOT MEET, IN SOME CASES, THE REQUIREMENT OF PROMPT, ADEQUATE AND

EFFECTIVE COMPENSATION IN INTERNATIONAL LAW, AND AS PRESCRIBED BY SECTION 502 (B) (4) OF TITLE V OF THE TRADE ACT OF 1974. SECTION 502 (B) (4) READS IN PERTINENT PART AS FOLLOWS:

-- IN ADDITION, THE PRESIDENT SHALL NOT DESIGNATE ANY
-- COUNTRY A BENEFICIARY DEVELOPING COUNTRY UNDER THIS
-- SECTION ... IF SUCH COUNTRY (A) HAS NATIONALIZED,
-- EXPROPRIATED, OR OTHERWISE SEIZED OWNERSHIP OR
-- CONTROL OF PROPERTY OWNED BY A UNITED STATES CITIZEN
-- OR BY A CORPORATION, PARTNERSHIP, OR ASSOCIATION
-- WHICH IS 50 PERCENT OR MORE BENEFICIALLY OWNED BY
-- UNITED STATES CITIZENS, THE EFFECT OF WHICH IS TO
-- NATIONALIZE, EXPROPRIATE, OR OTHERWISE SEIZE
-- OWNERSHIP OR CONTROL OF PROPERTY SO OWNED...UNLESS
-- (D) THE PRESIDENT DETERMINES THAT (I) PROMPT,
-- ADEQUATE AND EFFECTIVE COMPENSATION HAS BEEN
-- OR IS BEING MADE TO SUCH CITIZEN, CORPORATION,
-- PARTNERSHIP OR ASSOCIATION,
-- (II) GOOD FAITH NEGOTIATIONS TO PROVIDE PROMPT,
-- ADEQUATE, AND EFFECTIVE COMPENSATION UNDER THE
-- APPLICABLE PROVISIONS OF INTERNATIONAL LAW ARE
-- IN PROGRESS, OR SUCH COUNTRY IS OTHERWISE
-- TAKING STEPS TO DISCHARGE ITS OBLIGATIONS
-- UNDER INTERNATIONAL LAW WITH RESPECT TO SUCH
-- CITIZEN, PARTNERSHIP, OR ASSOCIATION, OR
-- (III) A DISPUTE INVOLVING SUCH CITIZEN,
-- CORPORATION, PARTNERSHIP, OR ASSOCIATION OVER
-- COMPENSATION FOR SUCH A SEIZURE HAS BEEN
-- SUBMITTED TO ARBITRATION UNDER THE PROVISIONS
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-- OF THE CONVENTION FOR SETTLEMENT OF INVESTMENT
-- DISPUTES, OR IN ANOTHER MUTUALLY AGREED UPON
-- FORUM, AND PROMPTLY FURNISHES A COPY OF SUCH
-- DETERMINATIONS TO THE SENATE AND HOUSE OF
-- REPRESENTATIVES.

7. THE UNITED STATES GOVERNMENT HAS BEEN ENCOURAGED BY THE REPEATED ASSURANCES RECEIVED IN RECENT YEARS FROM SENIOR OFFICIALS OF THE SOCIALIST REPUBLIC OF ROMANIA THAT A POSITIVE SOLUTION TO THE PROBLEM WOULD BE FOUND WHICH WOULD BE CONSISTENT WITH THE LAWS OF THE TWO COUNTRIES AND CONSONANT WITH THE REQUIREMENTS AND PRACTICES OF INTERNATIONAL LAW AND THE GOOD RELATIONS WE ENJOY. FOR THIS REASON, THE UNITED STATES EMBASSY HAS CONTINUED TO SEEK SOLUTIONS ON A CASE-BY-CASE BASIS TO PROBLEMS POSED BY INDIVIDUAL CLAIMS. ALTHOUGH THIS APPROACH HAS NOT YET YIELDED SATISFACTORY RESULTS, WE BELIEVE BOTH GOVERNMENTS HAVE A STRONG INTEREST IN

PURPOSEFUL CONTINUATION OF THESE EFFORTS.

8. THE GOVERNMENT OF THE UNITED STATES REITERATES ITS VIEW, PREVIOUSLY STATED ON NUMEROUS OCCASIONS, THAT THE LIMITATIONS IMPOSED BY DECREE 223/1974 TO THE MAXIMUM OF 40,000 LEI FOR EACH HOUSING FACILITY (APARTMENT) IN URBAN AREAS AND 20,000 LEI IN RURAL AREAS WOULD NOT MEET THE REQUIREMENT FOR THE PAYMENT OF PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION FOR THE EXPROPRIATION OF PROPERTY OF UNITED STATES NATIONALS WHERE THE VALUE OF SUCH PROPERTY EXCEEDED THE MAXIMUM AMOUNTS BOTH UNDER INTERNATIONAL LAW AND SECTION 502 (B) (4) OF TITLE V OF THE TRADE ACT OF 1974.

9. THE GOVERNMENT OF THE UNITED STATES IS OF THE OPINION THAT THESE ASSURANCES OF COOPERATION ON THE PART OF REPRESENTATIVES OF THE GOVERNMENT OF THE SOCIALIST
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REPUBLIC OF ROMANIA SHOULD PROVIDE AN APPROPRIATE BASIS FOR PROMPT RESOLUTION OF CLAIMS OF UNITED STATES NATIONALS FOR THE EXPROPRIATION OF PROPERTY UNDER THE TERMS OF DECREE 223/1974, INCLUDING THOSE CASES ALREADY PRESENTED BY THE AMERICAN EMBASSY FOR FINAL SETTLEMENT AND OTHER MERITORIOUS CLAIMS WHICH MAY BE PRESENTED IN THE FUTURE. THE GOVERNMENT OF THE UNITED STATES LOOKS

FORWARD TO PROMPT ACTION BY THE GOVERNMENT OF THE
SOCIALIST REPUBLIC OF ROMANIA TO CARRY OUT THESE
ASSURANCES IN ORDER TO AVOID ANY COMPLICATION WITH THE
CONTINUATION OF ROMANIA'S ELIGIBILITY FOR BENEFITS UNDER
THE GENERALIZED SYSTEM OF PREFERENCES.

10. DEPARTMENT WOULD APPRECIATE REPORT ON GOR RESPONSE TO
EMBASSY REPRESENTATION. VANCE

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